did not inform the jury of the alternative in case the duty was upon plaintiff, for the instructions must be considered as a whole.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 705-713, 715, 716, 718; Dec. Dig. § 296.* 7 Va.-W. Va. Enc. Dig. 743.]

4. Master and Servant (§ 293*)—Injuries to Servant—Actions—Instructions.—In an action by a miner, injured by a fall of slate in a room in which he was directed to work, though defendant had intended to abandon it, coal blocking the entrance having been removed, an instruction that, if defendant's superintendent knew or should have known that the roof was liable to fall, it was his duty to exercise reasonable care to support it, or to warn employees of the danger, and that if plaintiff was directed to work in such room defendant was not excused from his duty to use all reasonable care, is not erroneous in disregarding the right of the mineowner to close part of the workings, or its mine, without placing them in a safe condition.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1148-1156, 1158-1160; Dec. Dig. § 293.* 9 Va.-W. Va. Enc. Dig. 673.]

5. Appeal and Error (§ 1052*)—Review—Harmless Error.—Where an injured servant was awarded only $3,000 for injuries of a permanent character and the defendant did not complain of the amount, the improper admission of evidence as to the number of the servant's family is not reversible error.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4171-4177; Dec. Dig. § 1052.* 1 Va.-W. Va. Enc. Dig. 592.]

Error to Circuit Court, Lee County.

Action by W. H. Shoop against the Darby Coal Mining Company. There was judgment for plaintiff and defendant brings error. Affirmed.

R. T. Irvine and *Bullitt & Chalkley,* all of Big Stone Gap, for plaintiff in error.

E. M. Fulton, of Wise, and *C. R. McCorkle,* of Appalachia, for defendant in error.

LINKOUS *v.* STEVENS et al.

Nov. 12, 1914.

[83 S. E. 417.]

1. Judgment (§ 707*)—Conclusiveness—Persons Concluded.—A testator died leaving two parcels of land, the smaller of which all

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

the children, save one son, who later became insolvent, joined in conveying to the widow. After the conveyance, creditors of such son filed a bill to reach his interest in the parcel not conveyed; the bill not mentioning the smaller tract. The widow and other children filed an answer and cross-bill setting up that the insolvent son had received his share of the estate by way of advancement. The matter was referred to a special commissioner, and, before he reported, the widow conveyed the smaller tract to defendant's father, who was one of her grantors, for life, with remainder in fee to defendant. The commissioner's report mentioned the smaller tract only as part of the assets of the deceased. Held that, where defendant who was an infant, was not brought in by any service of process, a decree, though acquiesced in by the widow, which adjudged that, subject to the widow's dower, the smaller tract should go to all the children, save the insolvent, was void for want of jurisdiction, the court, while having jurisdiction over the subject-matter, not having jurisdiction over the person of defendant; hence such decree was not binding on defendant.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. § 1230; Dec. Dig. § 707.* 8 Va.-W. Va. Enc. Dig. 278.]

2. Equity (§ 464*)—Bill of Review—Nature.—On bill of review to set aside a judgment based on an earlier judgment set up by a plea of res judicata, the question whether the original judgment was procured by fraud should not be considered, where it appeared that it was void as to petitioner for want of service.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1129-1140; Dec. Dig. § 464.* 8 Va.-W. Va. Enc. Dig. 537; 2 Va.-W. Va. Enc. Dig. 390.]

Appeal from Circuit Court, Tazewell County.

Bill by M. M. Stevens and others against John Mervin Linkous. After a decree for complainants, defendant, by his guardian ad litem, moved for leave to file bills of review. From a decree denying leave, he appeals. Reversed and remanded with directions.

Harman & Pobst, of Tazewell, for appellant.

H. M. & T. R. Bandy, of Norton, and *Greever & Gillespie,* of Tazewell, for appellees.

NORFOLK & W. RY. CO. *v.* CITY OF BRISTOL.

Nov. 12, 1914.

[83 S. E. 421.]

1. Municipal Corporations (§ 648*)—Public Ways—Prescription.—

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.